

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 5383 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RAVINDRA I PATEL

Versus

KIRTIBHAI P SONI

Appearance:

MR BB NAIK for Petitioner

M/S THAKKAR ASSOC. for Respondent No. 1

MR ND GOHIL, LD. APP for Respondent No. 2

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 27/03/98

ORAL JUDGEMENT

1. This Misc. Criminal Application has been filed for obtaining special leave to appeal by the applicant for challenging the judgment and order dated 10/1/1997 rendered by the Ld. Chief Judicial Magistrate, Rajkot in Criminal Case No. 892 of 1990.

2. It is the case of the applicant that in 1989 he was Assistant Commissioner of Income Tax, Rajkot. Pursuant to the provisions of the Income Tax Act (for short 'the Act') a search was carried out in respect of M/s. Premaji Valji & Sons, owned and/or managed by opponent no.1. It was found that there was difference in weight of the gold and ornaments. Hence, the applicant issued summons u/S. 131 of the Act to the opponent no.1 for remaining present on 18/5/1989 with the books of account and other documents in the inquiry in question. In spite of service of summons the opponent no. 1 did not remain present before the applicant. Hence, once again summons was issued directing opponent no. 1 to remain present on 12/6/1989. This summons also met with the same fate resulting in filing of complaint in the Court of the Ld. Chief Judicial Magistrate, Rajkot. It was Criminal Case No. 892 of 1990. The opponent no. 1 was charged with the offence punishable u/S. 174 of the Indian Penal Code (for short 'IPC'). The Learned Magistrate after trial and hearing the submissions made on behalf both the parties, acquitted the opponent no. 1 by his impugned judgment and order dated 10/1/1997. The same has been subjected to challenge with a prayer for granting special leave.

3. I have heard learned Addl. Standing Counsel appearing for the applicant, Mr. P.M. Thakkar, Ld. counsel for opponent no. 1 and Mr. N.D. Gohil, Ld. A.P.P. for opponent no.2- State. I have gone through the judgment rendered by the Ld. Magistrate, as also the pleadings concerning and revolving round the facts of the case. It might be noted from the reasons given by the learned Magistrate that the applicant failed to establish before the Ld. Magistrate that the opponent no. 1 being the accused before the Court had intentionally absented himself in answer to the summons in question on the relevant date i.e. 12/6/1989. Evaluating the evidence which was placed on record the Ld. Magistrate came to the same conclusion. Reference has been made to the order passed by the Deputy Commissioner (IT), Rajkot Range II, Rajkot. The same appears also in this proceeding at page 38. It would read as under :-

"The Asstt. Commissioner of Income Tax, Cir.2, (Investigation), Rajkot made a reference to the undersigned for levying the penalty u/s. 272A (1)(c) for failure on the part of assessee Shri Kirtibhai P. Soni, Rajkot to attend the proceedings before the A.C.I.T., Cir.2, (Inv.), Rajkot in response to summons u/s. 131 of the I.T. Act, 1961. The case was referred by the

A.C.I.T., Cir.2(Inv.), Rajkot for disobedience on the part of the assessee without reasonable cause. The case was fixed on 25/01/1990 on which date Shri D.V. Lalchandani, Advocate appeared on behalf of the assessee and submitted a written reply. Shri Lalchandani Advocate has given satisfactory reason for not complying with the notice u/s. 131 issued by the A.C.I.T. He has also stated, supported by documentary evidence like air-ticket, etc., that the assessee had reasonable cause for not attending the proceedings u/s. 131 of the Act on particular day because of urgent important preoccupation. Shri Lalchandani, Advocate also stated in his reply and explained to me that the assessee has been complying with the requirements of the department from time to time and there was no intention of defying the authority of the A.C.I.T.

2. After considering the totallity of the facts and circumstances of the case, I am satisfied that it is not a fit case for levying penalty u/s. 272A(1)(c) read with sec. 131 of the I.T. Act, 1961. Therefore, the proceedings are hereby dropped."

The aforesaid order relates to the summons in question which was once issued and again reissued. The case of the opponent no. 1 is that he was to proceed to Bombay on 12/6/1989. His further defence is that since he could not get the tickets when he went to Air Port, he had to get reservation for 14th. This made it impossible for him to attend to concerned authority on 12/6/1989. The aforesaid order placed on record would support the bonafides of the opponent no.1 as it is the common case that the order reproduced hereinabove relates to the proceeding in question.

4. Under the aforesaid circumstances, I do not see any reason for interfrerring with the acquittal rendered by the Ld. Chief Judicial Magistrate.

In the result, leave to appeal against the impugned judgment and order of acquittal is hereby refused. M.C.A. stands rejected.

* * *

